poration sells its assets in 1917 for $6,000 more than their value March 1, 1913, plus additions, less depreciation, the $6,000 is taxable. *Eldorado Coal Co.* v. *Mager*, 255 U. S. 522 (1921). Stock bought in 1912 for $500; worth $695 March 1, 1913, and sold for $13,931 shows a taxable profit of $13,236. *Goodrich* v. *Edwards*, 255 U. S. 527 (1921).

(2) Original cost $1; value 1913 fifty cents; selling price $2—result, taxable profit $1. See § 202 (b) referring back to (a). Or the taxpayer may pay 12½% flat as stated above. Under the prior Act, stock purchased for $231,300 in 1902; worth $164,480 March 1, 1913; and sold for $276,150 in 1916 showed a taxable profit of $44,850. *Walsh* v. *Brewster*, 255 U. S. 536 (1921).

(3) Original cost $1; value 1913 $3; selling price $2—result, no taxable profit. See § 202 (b) (3).

(4) Original cost $1; value 1913 $2; selling price $2—result, no taxable profit. See § 202 (b) (3). Under the prior Act, even though on liquidation the stockholders get twice what they invested, yet if the selling price was not more than the value on March 1, 1913, there is no tax. *Lynch* v. *Turrish*, 247 U. S. 221 (1918).

(5) Original cost $1; value 1913, $2; selling price $1—result, no taxable profit or deductible loss. See § 202 (b) referring back to (a). Under the prior Act there is no taxable profit on stock bought in 1909 and sold at the same price in 1916, even though the value was less on March 1, 1913. *Walsh* v. *Brewster*, 255 U. S. 536 (1921).

(6) Original cost $1; value 1913, fifty cents; selling price 75 cents—result, no deductible loss or taxable profit. See § 202 (b) (2). Under the prior Act stock received in exchange in 1912 for stock then worth $291,600; worth $148,635 March 1, 1913, and sold for $269,346 in 1916 shows no taxable profit. *Goodrich* v. *Edwards*, 255 U. S. 527 (1921).

(7) Original cost $1; value 1913, fifty cents; selling price $1—result, no deductible loss. See § 202 (b) (2) and (a).

(8) Original cost $1; value 1913, fifty cents; selling price fifty cents—result, no deductible loss. See § 202 (b) (2).

(9) Original cost $1; value 1913, fifty cents; selling price twenty-five cents—result, deductible loss of 25 cents. See § 202 (b) (2).

(10) Original cost $1; value 1913, $2; selling price 50 cents—result, deductible loss of 50 cents. See § 202 (b) referring back to (a).

CONSTITUTIONAL LAW—TAXATION—INCOME AS PROPERTY.—The words "property" and "income" are of such character that it is difficult to confine them within the inflexible boundaries of strict definitions. It has been stated that "a tax on incomes is not a tax on property, and a tax on property does not embrace incomes." BLACK ON INCOMES, (Ed. 3) § 36. In *Raymer* v. *Trefry*, (Mass. 1921), 132 N. E. 190, under a statutory proceeding, complaint was made for the abatement of an income tax assessed at the rate of 2½% per annum in respect of income received as associate professor in Harvard University. The Massachusetts constitution, Amendment 44, puts

income in two classes for purpose of taxation, and then reads: "The General Court may tax income not derived from property at a lower rate than income derived from property." Complainant contended that as income derived from annuities was taxed only 1½%, income not derived from property could be taxed no more than income derived from property (annuities) under the above provision. The court held the tax valid, saying: "Salary is income derived from property." It takes the position that "property" is to be considered in its broadest sense, and as contracts of labor and service are protected under the constitution as property rights, citing *Bogni* v. *Perotti,* 224 Mass. 152, the income from such property rights, *salary,* is also property. On the proposition that salary is income there seems to be no dispute. "Income," as defined by Mr. Webster, is "that gain which proceeds from labor, business, property, or capital of any kind; as * * * the proceeds of professional business, * * * salary." Webster's Int. Dic. 745, cited in *Mundy* v. *Van Hoose,* 104 Ga. 292, 299. Salary is income. *White* v. *Koehler,* 70 N. J. Law 526. Is income in this sense, then, derived from property? What constitutes property within the meaning of the Massachusetts constitution? The court holds that property is a word of large import, and includes even contracts of service, and hence income derived from such contracts is derived from property and under the former decisions of the same court is property. *Opinion of Justices,* 220 Mass. 613, 624. "The word 'property' literally taken, is *nomen generalissimum,* but it is not always so used." *Wells Fargo Co.* v. *Mayor,* 207 Fed. 871, 876. It "extends to every species of valuable right and interest." *Watson* v. *Boston,* 209 Mass. 18, 23. It "includes everything which goes to make up one's wealth or estate." *Carlton* v. *Carlton,* 72 Me. 115. "Labor or the right to labor is as much property as land or money." *Jones* v. *Leslie,* 61 Wash. 107. "But not in the sense that it can be liable to a property tax." *State* v. *Wheeler,* 141 N. C. 773. "Property is the right and interest which one has in land and chattels to the exclusion of others." Bouvier, citing 17 Johns. (N. Y.) 283. For further definitions see WORDS AND PHRASES, "Property."

Property has not only a broad general meaning, but also a more limited significance. Although it may be broad enough to cover the right to work, the question before the Massachusetts court is the same question that the Georgia court answered in *Savannah* v. *Hartridge,* 8 Ga. 23, 28, saying: "The point to be decided is, not whether income may not possibly be comprehended under the general name of 'property,' but *whether such is its meaning, and such was the design of the Legislature, in this Act?*" The objections to the decision are that the framers of the constitutional amendment may not have used the word in its general sense when referring to incomes, and "it is a cardinal principle of constitutional construction to give to a constitution and its provisions, the meaning, if possible of ascertainment, intended by its framers." *Laird* v. *Sims,* 16 Ariz. 521, 524. Under the view of the Massachusetts court there is practically nothing of value that is not property and as all income is derived from something of value, tangible or intangible, all income therefore is derived from property, and

the provision relating to income not derived from property, is nullified for it has nothing to be effective upon. By the court's construction of the word "property" the classification in the constitution is practically eliminated. It would seem more logical to say that the framers of the provision used "property" in a more limited sense, and did intend to make such a classification of incomes as their words indicate. "The words of the amendment are to be construed in such a way as to carry into effect what seems to be the reasonable purpose of the people in adopting them." *Attorney General* v. *Methuen,* 236 Mass. 564. There is also the objection that the income is not derived from the contract of service, but from performance under the contract. The contract gives a right to render services, but the right to compensation, to the income, comes into being by performance,—by rendering services, and hence although the contract is property, the income is not derived from that contract of service, but is the product of the services themselves. The question remaining is whether the services are property. "A man's right to labor, * * * or practice a lawful profession, may not be taken away from him or be restricted by any act of the State, not within its police powers, such act being considered a deprivation of property within the constitutional inhibition, State or Federal. Such cases are far from saying, however, that services actually rendered under such a contract are themselves property. It is one thing to say that a man's right to engage or sell his services may, for the purposes of its protection, be considered a species of property,—and quite another to assert that services actually rendered by one person to another are to be considered property in order to enlarge remedies for collecting the debt. The right to labor is one thing,—the service itself is quite a different thing." *Gleason* v. *Thaw,* 185 Fed. 345.

Although the Massachusetts case seems to have gone a greater length than any other in its use of the word "property," it is supported by *Eliasberg Bros. Co.* v. *Grimes,* 204 Ala. 492, holding that income is property within the meaning of the Alabama constitutional provision limiting the rate to a certain percentage of the value of the state's taxable property, and by *State* v. *Pinder,* 30 Del. 416, holding that income is property within the meaning of a provision in the Delaware constitution. But in *Waring* v. *Savannah,* 60 Ga. 93, it was held that income was not property within the meaning of a constitutional provision that taxes must be uniform. In *Glasgow* v. *Rowse,* 43 Mo. 479, an income tax was considered not a tax upon property within the meaning of a constitutional provision requiring taxation on property to be in proportion to its value, and in 1918 this decision was followed in construing another income tax statute, but by a court divided four to three. *Ludlow-Saylor Wire Co.* v. *Wollbrinck,* 275 Mo. 339. In the *Income Tax Cases,* 148 Wis. 456, the court held that property was one thing—income another. See also *Opinion of Justices,* 77 N. H. 611; *Wilcox* v. *Commissioners,* 103 Mass. 544; 11 A. L. R. 313, *Note;* WORDS AND PHRASES, First and Second Series, *Income, Property.*

From this brief review of the cases, it is apparent that the words are of such a general character, so flexible in their significance, that their true

meaning can only be determined by a decision of the highest appellate court arrived at after a full consideration of the purpose of the provision, the context, the history of the Constitution, and the intent of the Constitutional Convention, the Legislature, and the people. W. C. O'K.

DECLARATORY JUDGMENTS.—The subject of declaratory judgments has received a great deal of attention in the United States during the last few years, and the interest aroused has resulted in the enactment of statutes in a considerable number of states authorizing courts to declare the rights of parties in cases where relief of the conventional sort is inadequate, inconvenient or impossible. Such judgments may now be obtained in California, St. 1921, ch. 463; Connecticut, P. A. 1921, ch. 258; Florida, Laws 1919, No. 75; Hawaii, Laws 1921, Act 162; Kansas, Laws 1921, ch. 168; New Jersey, Laws 1915, ch. 116, Sec. 7; New York, Laws 1920, ch. 925, Sec. 473; Wisconsin, Laws 1919, ch. 242.

Following the suggestion first appearing in this REVIEW (16 MICH. L. REVIEW 69, December 1917) the Michigan legislature passed the first general act in this country giving courts of law and equity authority to render such judgments. PUB. ACTS, 1919, No. 150; 17 MICH. L. REV. 688. But when the first case under the new act came before the supreme court of Michigan the court itself raised the question of its constitutionality, and invited briefs from the attorney general and from some of the known supporters of the statute, upon the question whether it conferred upon the courts non-judicial functions. And in the opinion which the court rendered upon the case referred to, the statute was held to be vulnerable on the point suggested, and it was declared to be unconstitutional, Justices Sharpe and Clark dissenting. *Anway* v. *Grand Rapids Ry. Co.*, 211 Mich. 592. See comment on this case in 19 MICH. L. REV. 86, and 30 YALE L. JOUR. 161, and an article severely criticising it in 5 MINN. L. REV. 172, entitled DECLARATORY JUDGMENT, by JAMES SCHOONMAKER of the St. Paul bar.

After the decision in the *Anway* case, the legislature of Kansas, undaunted by the adverse action of the Michigan supreme court, enacted the Michigan Declaratory Judgment Act as a Kansas statute, using for the most part the exact provisions of the Michigan act, but adding the phrase "in cases of actual controversy," which did not appear in the Michigan law. See the text of this statute and comment thereon in 19 MICH. L. REV. 537.

Pursuing the course taken in Michigan, a constitutional attack was made on the Kansas law in the first case which arose under it. *State ex rel. Hopkins* v. *Grove* (Kan. 1921) 201 Pac. 82. By a remarkable coincidence this case was almost identical with the *Anway* case in Michigan. In the Michigan case the court was asked to declare whether the plaintiff had a right to enter into a contract which was possibly prohibited by a penal statute. In the Kansas case the court was asked to declare whether the defendant had a right to enter into an office from which he was possibly prohibited by a penal statute. In neither case had the party taken any legal step toward the questionable act,—in Michigan he had not entered into the contract, in